Mohd Rafizi bin Ramli v Dato' Sri Dr Mohamad Salleh bin Ismail & Anor

COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO W-02(NCVC)(W)-2249–12 OF 2016
HAMID SULTAN, HANIPAH FARIKULLAH AND KAMALUDIN MD SAID JJCA
1 OCTOBER 2019

Tort — Defamation — Defences — Fair comment — High Court dismissed appellant's defence of fair comment — Appellant appealed against High Court's decision — Whether defence of fair comment available

The appellant in the present defamation action appealed against the decision of the trial court for awarding a sum of RM150,000 as damages and costs. The respondents had a cross-appeal on the decision of the trial court. The first respondent had made an application for loan for the purchase of eight units of offices, with the strength of money deposited in the account of the second respondent, which money had nexus to government funding. When the appellant made the statement, he was not aware that the application for loan was cancelled by the bank or did not proceed. It was not brought to the notice of the appellant until the respondents commenced the action. The first respondent was the chairman and director of the second respondent while the appellant was a politician. In a press conference held by the appellant, he alleged that a portion of the proceeds of government loan given by the second respondent for the purposes of the national feedlot centre had been deposited with a bank. The deposit was then used as leverage for personal loans for the purchase of eight units of offices ('the statements'). The second respondent published an article on the allegations made by the appellant and uploaded a video clip of the press conference on its website. The appellant commenced an action for defamation against the first respondent on the grounds that the statements were defamatory to the appellant and against the second respondent for the publication of the video clip recording of the press conference. In claiming for damages, the appellant contended that the publication of the statements had caused the business of the second appellant deteriorated significantly. The first respondent raised the defences of fair comment and qualified privilege while the second respondent raised the defence of reportage. The High Court allowed the appellant's claim against the first respondent and dismissed the appellant's claim against the second respondent. The present appeal was an appeal against the decision of trial judge in dismissing the first

respondent's defence on fair comment, in not allowing the first respondent to prove on the misappropriation of public funds by the appellant.

Held, allowing the appellant's appeal; dismissing the respondents' cross-appeal and setting aside the order against the appellant with costs of RM110,000:

(1) In a defence of fair comment, if the primary facts were true, in the absence of malice or falsehood, the defence of fair comment should ordinarily succeed. Only when the primary facts were not true, other facts which the trial court had admirably deliberated on the elements of fair comment to succeed became relevant. It was well established that fair and bona fide comments or criticism upon matter of public interest could not be scandalous or libellous or even warranting criminal defamation. Fair comment was one of the pillar defence to an action in defamation and must not be read only with the common law cases but also art 10 of Federal Constitution which was the supreme law of the land. Malice or falsehood did not relate to free speech guaranteed under the Federal Constitution. The facts of the present case were not one related to malice or falsehood. What was important was the statement made in respect of the purchase of eight unit of offices was correct (see paras 8–12).

[Bahasa Malaysia summary

Perayu dalam tindakan saman malu ini merayu terhadap keputusan mahkamah bicara dalam membenarkan sejumlah RM150,000 sebagai ganti rugi dan kos. Responden telah membuat rayuan silang atas keputusan mahkamah bicara. Responden pertama telah membuat permohonan untuk pinjaman untuk pembelian empat unit pejabat, dengan kekuatan wang yang didepositan dalam akaun responden kedua, yang mana wang mempunyai nexus dengan pembiayaan kerajaan. Apabila perayu membuat pengtaan tersebut, dia tidak sedar sama ada permohonan untuk pinjaman tersebut telah dibatalkan oleh bank atau tidak diteruskan. Ianya tidak dibawa ke perhatian perayu sehingga responden memulakan tindakan ini. Responden pertama merupakan pengerusi dan pengarah responden kedua, manakala perayu merupakan seorang ahli politik. Dalam satu sidang media yang diadakan oleh perayu, dia telah mengatakan bahawa sebahagian daripada pinjaman kerajaan yang diberikan oleh responden kedua untuk tujuan pusat feedlot nasional telah didepositkan dengan satu bank. Deposit tersebut telah kemudiannya digunakan sebagai pengaruh untuk mendapatkan pinjaman peribadi untuk pembelian lapan untuk pejabat ('pernyataan tersebut'). Responden kedua telah menerbitkan satu artikel berkenaan dengan alegasi yang dibuat oleh perayu dan memuat naik satu klip video sidang media tersebut di laman webnya. Perayu telah memulakan tindakan untuk saman malu terhadap responden pertama atas alasan pengataan yang dibuat adalah fitnah kepada perayu dan

terhadap responden kedua untuk penerbitan klip video rakaman sidang media tersebut. Dalam menuntut untuk ganti rugi, perayu menghujahkan bahawa penerbitan pengataan tersebut yang menyebabkan perniagaan perayu kedua telah merosot secara signifikan. Responden pertama membangkitkan pembelaan komen berpatutan dan pelindungan bersyarat manakala defendan kedua menimbulkan pembelaan pelaporan. Mahkamah Tinggi membenarkan tuntutan perayu terhadap responden pertama dan mengetepikan tuntutan perayu terhadap responden kedua. Rayuan ini adalah rayuan terhadap keputusan hakim bicara yang mengetepikan pembelaan responden pertama berdasarkan komen berpatutan, dalam tidak membenarkan responden pertama untuk membuktikan pelesapan dana awam oleh perayu.

Diputuskan, membenarkan rayuan perayu; mengetepikan rayuan silang responden dan mengetepikan perintah terhadap perayu dengan kos RM110,000:

(1) Dalam satu pembelaan komen berpatutan, sekiranya fakta asas adalah benar, dalam ketiadaan niat jahat atau penipuan, pembelaan komen berpatutan sepatutnya dalam kebiasaan berjaya. Hanya apabila fakta asas tidak benar, fakta lain yang mana mahkamah bicara telah memutuskan atas elemen komen berpatutan untuk berjaya menjadi relevan. Telahpun diputuskan bahawa komen adil dan bona fide atau kritikan terhadap perkara yang menjadi kepentingan awam tidak boleh menimbulkan skandal atau libel ataupun menyebabkan fitnah jenayah. Komen adil adalah salah satu pembelaan asas kepada tindakan fitnah dan tidak hanya dibaca berdasarkan kes common law tetapi juga perkara 10 Perlembagaan Persekutuan yang merupakan undang-undang mutlak negara. Niat jahat dan penipuan tidak berkaitan dengan kebebasan bersuara yang dijamin dibawah Perlembagaan Persekutuan. Fakta dalam kes ini bukanlah satu yang berkaitan dengan niat jahat atau penipuan. Apa yang penting adalah pengataan yang dibuat berkaitan dengan pembelian lapan unit pejabat adalah tepat (lihat perenggan 8–12).]

Notes

For cases on defences, see 12(1) *Mallal's Digest* (5th Ed, 2017 Reissue) paras 474–518.

Cases referred to

Bonnard v Perryman [1891] 2 Ch 269, CA (refd)

Chew Peng Cheng v Anthony Teo Tiao Gin [2008] 5 MLJ 577; [2008] 8 CLJ 418, HC (refd)

Cream Holdings Ltd and others v Banerjee and another [2005] 1 AC 253, HL (refd)

CS Wu v Wang Look Fung & Ors [1981] 1 MLJ 178, CA (refd)

Kyros International Sdn Bhd v Ketua Pengarah Hasil Dalam Negeri [2013] 2 MLJ 650, CA (refd)
Macvilla Sdn Bhd v Mervyn Peter Guan Yin Hui & Anor [2019] MLJU 693, CA (refd)
Pegawai Pengurus Pilihanraya v Streram Sinnasamy & Ors [2019] 1 LNS 589, CA (refd)
Slim v Daily Telegraph Ltd [1968] 2 QB 157, CA (refd)

Legislation referred to

Defamation Act 1957 s 10
Federal Constitution art 10
Rules of Court 2012 O 57

Appeal from: Suit No 22NCVC-53–06 of 2016 (High Court, Kuala Lumpur)

Ranjit Singh (Ng Siau Sun and Carmen Ng with him) (Sun & Michele) for the appellant.
Sarah Abishegam (Noor Farhah Mustaffa and Ian Hannibal with her) (Shafee & Co) for the respondents.

Hamid Sultan JCA (delivering judgment of the court):

[1] The appellant/first defendant in a defamation action appeals against the decision of the learned High Court judge for awarding a sum of RM150,000 as damages plus costs, etc. The respondents/plaintiffs also have a cross-appeal on the decision of the learned judge.

[2] In the instant case the first plaintiff had made an application for loan for purchase of eight units of offices, with the strength of money deposited in the account of the second plaintiff, which money has nexus to government funding. When the first defendant made the statement, he was not aware that the application for loan — was cancelled by the bank and/or did not proceed.

This fact was also not brought to the notice of the first defendant until the plaintiffs commenced the action.

[3] The brief facts and the grounds of decision of the learned judge has been placed in a rudimentary manner before us and to save courts time, we repeat and it reads as follows.

BRIEF FACTS AND GROUNDS

Brief facts:

1. The first plaintiff was the chairman and director of the second plaintiff

A while the first defendant was a politician.

2. In a press conference held by the first defendant, he alleged that a portion of the proceeds of government loan given to the for the purposes of the national feedlot centre had been deposited with a bank. The deposit was then used as leverage for personal loans for the purchase of eight units of offices ('the statements').

B

3. The basis of these contentions were bank records which the first defendant received anonymously, revealing:

C — customer profiles of the plaintiffs, companies related to the plaintiffs and the directors of such companies; and

— the details of the eight office units recorded as collateral in the bank's collateral system ('the documents').

4. The second defendant published an article on the allegations made by the first defendant and uploaded a video clip of the press conference on its website.

D

5. The plaintiffs thus commenced an action for defamation against:

E — the first defendant on the grounds that the statements were defamatory of the plaintiffs; and

— the second defendant for the publication of the video clip recording of the press conference.

6. In claiming for damages, the plaintiffs contended that following the publication of the statements, the business of the deteriorated significantly.

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7. The first defendant raised the defences of fair comment and qualified privilege while the second defendant raised the defence of reportage.

8. The High Court allowed the plaintiffs' claim against the first defendant; and dismissed the plaintiffs' claim against the second defendant.

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9. Thus, the plaintiffs vide Appeal 2248, appealed against the decision of learned High Court judge in dismissing its claim against the second defendant (However, this appeal was withdrawn by the plaintiffs).

10. While Appeal 2249 is the appeal by the first defendant against the decision of learned High Court judge in dismissing the first defendant's defence on fair comment, in not allowing the first defendant to prove on the misappropriation of public funds by the plaintiffs, and in dismissing the first defendant's defence on qualified privileged.

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11. FINDING OF LEARNED HIGH COURT JUDGE

I

Issue (i) whether the statements made by the first defendant were defamatory of the plaintiffs.

1. The statements were defamatory of the plaintiffs as they had the effect

of lowering the estimation of the plaintiffs in the eyes of the public. A

2. A reasonable reader reading the statements would conclude that public funds were put at risk by the conduct of the plaintiffs, used as a guarantee or leverage to obtain personal loans, and expanded to purchase real estate in the private names of the first plaintiff's family members. B

Issue (ii) whether the words in the statements were a commentary and, if yes, whether the comments were based on facts established to be true

1. The defence of fair comment was not available to the first defendant. The statements made by the first defendant were couched as statements of fact and did not constitute a comment. The statements were premised on the documents which the first defendant had obtained. However, there was nothing in the documents that suggested that the deposit by the second plaintiff had been used either as leverage or as security or collateral for the grant of any loan. The basic facts available to the first defendant did not support the inference that he had drawn from those facts. C D

Issue (iii) whether the first defendant established defence of qualified privilege

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1. The first defendant's defence of qualified privilege had not been made out.

2. The first defendant testified that he had no way of verifying the accuracy or completeness of the information contained in the documents. The first defendant had time to analyse the contents of the documents and to prepare a three-page press statement. If there was sufficient time to have prepared a press statement, then there would have been time to contact the plaintiffs for verification of the allegations. Nonetheless, no attempt was made to contact the first defendant to verify the inferences that he had drawn from the contents of the documents. F G

Issue (iv) whether defence of reportage available to the second defendant?

1. The effect of the reporting by the second defendant was to report the fact that the statements had been made at the press conference convened by the first defendant rather than for the purpose of persuading the reader and/or viewer of the truth of their contents. H

2. The video clip was limited to the inclusion of captions and graphics and was a faithful recording of the actual events that had taken place. I

3. The reporting was also done in a fair, disinterested and neutral way. The accompanying news article clearly attributed quotes to the first defendant

A in quotation marks and the journalist did not adopt the statements as her own.

4. The urgency of the matter justified the publication of the reporting because the second defendant is part of an alternative media where currency is placed on the immediacy of reporting. The decision by the second defendant to publish the report and the accompanying video clip without verification from the plaintiffs could not be faulted.

Issue (v) whether the plaintiffs were entitled to damages?

C

1. The first defendant was liable in damages to the plaintiffs. The first plaintiff was awarded the global sum of RM 150,000 in damages, taking into consideration that, inter alia:

D i. he was a well-known and respected person; and

ii. the nature of the allegations against him was serious and suggestive of criminal impropriety.

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2. The nature of the allegations against the second plaintiff was different from that of the first plaintiff. The second plaintiff could not claim to have a reputation that was as highly-regarded as the first plaintiff. Therefore, the second plaintiff was awarded the global sum of RM50,000 in damages.

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3. The deterioration and the loss of profits claimed to have been suffered by the second plaintiff's business had nothing to do with the act of the first defendant.

G PRELIMINARY OBSERVATIONS

[4] At the commencement of hearing of the appeal, learned counsel for the first defendant had informed the court that the first defendant is limiting the appeal to the defence of fair comment.

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[5] To appreciate the reason why we allowed the appeal, it must be noted that a statement of 'fact' of a happening of an event and reporting thereafter will not entail a success in a defamation suit. This is so, because truth is a complete defence. Only in the event the fact alleged is not the truth will other defences I such as absolute privilege, qualified privilege, justification, fair comment, etc apply to stand to mitigate the wrong statement of facts. The availability of these defences will also show that defamation action are technical in nature and the law does not give an absolute right for a person not to be defamed. The irony of the defamation action is that despite courts currently granting damages, the

quantum of which will be within the sub-court jurisdiction, plaintiffs have often abused the process by filing the suit in the High Court. In addition, recognition of defamation jurisprudence in the light of advancement of technology like internet, Facebook and WhatsA pp have diminished its value as well as utility. Further, when it relates to politician or persons who have nexus to politicians, etc. Article 10 of the Federal Constitution guarantees freedom of speech within the spirit and intent of the Federal Constitution as well as rule of law. In *Chew Peng Cheng v Anthony Teo Tiao Gin* [2008] 5 MLJ 577; [2008] 8 CLJ 418, Hamid Sultan bin Abu Backer JC (as he then was) on these issues, held:

> (1) The plaintiff's claim for defamation must fail. The definition of defamation is not a static concept to give recognition to the time immemorial principle that there must be certainty in law. The words complained of by the plaintiff could not be construed as defamatory in this time and era where public perception to accountability, transparency, good governance in respect of people holding office, or position, or those involved in the affairs of organisation such as associations has become more and more a subject matter of critical scrutiny by the public or by those who are associated with it.
>
> (2) As such, purely objecting to criticism by filing suits for defamation in millions of ringgit when issues of transparency, accountability and good governance is the focal point of the attack, does not promote constitutional rights to freedom of speech. The court would be reluctant to entertain them unless the attacks are in the nature which has no nexus and/or is not inextricably interwoven to the concept of transparency, accountability and corporate governance, and such acts are done with malice purely to assassinate the character of the individual personality and destroy his family, quality of life and privacy. The words complained of do not expose the plaintiff to hatred, ridicule or contempt or contempt in the mind of a reasonable man in this time and era, or would tend to lower the plaintiff in the estimation of right thinking members of society.
>
> (3) The circumstances leading to the publication of the purported offensive words and the defendants have proved substantial justification of the whole libel and there did not appear to be any element of malice, taking into consideration the complaint and dissatisfaction was addressed to the plaintiff directly.
>
> (4) The submission of the defendants on fair comment had some merits and the defendants were entitled on the facts of the case to make such comments though it may be critical. Any fair minded person would have reasonably done so. There was no element of malice. It could not be said the facts stated in the publication were false or the defendant made the publication recklessly.

[6] It must also be emphasised that a fact which has happened will remain as a fact, notwithstanding subsequent events may nullify the fact and make the fact as non-issue. This statement in the context of defamation can be best explained as follows: A, in the presence of B, forges the signature of his employer in the cheque slip of the employer. B subsequently makes a statement of A's conduct. Even though the statement of forgery of A will be defamatory,

A the law provides absolute defence to B if the statement is the truth. However, if A without the knowledge of B has destroyed the cheque and sues for defamation, in our view he ought not be allowed to succeed if A has not brought to the notice of B and ask B to tender an apology. If courts were to say otherwise, it will lead to entrapment with a view to unjust enrichment. To stop
B such conduct, inter alia, Legislature have enacted s 10 of the Defamation Act 1957.

CASE MANAGEMENT AND TRANSFER OF PROCEEDINGS

C **[7]** The High Court in all defamation action should at the case management stage itself direct the matter to be transferred to the sub-courts, if the quantum on the subject matter of dispute will be within sub-ordinate court limit (see O 57 of the Rules of Court 2012). Abusing High Court process in not filing matters in the sub-courts, when the sub-court has jurisdiction to deal
D with the matter must be taken by the High Court seriously. Trial courts should warn counsels that costs order may be made against counsel personally if ultimately the courts' jurisdiction has been abused.

FAIR COMMENT

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[8] In a defence of fair comment, if the primary facts are true, in the absence of malice and/or falsehood, the defence of fair comment should ordinarily succeed. This position will also be consistent with art 10 of the Federal Constitution. Only when the primary facts are not true, other facts which the
F learned trial judge had admirably deliberated on the elements of fair comment to succeed becomes relevant. The true test of fair comment essentially is 'whether the comment is an honest expression of a genuine opinion' (see *Slim v Daily Telegraph Ltd* [1968] 2 QB 157; *Chew Peng Cheng v Anthony Teo Tiao Gin* [2008] 5 MLJ 577; [2008] 8 CLJ 418). The phrase 'honest expression'
G and 'genuine opinion' does not relate to 'physical facts' but 'psychological facts'. Psychological facts related to the state of mind of the defendant to find liability or otherwise needs the court to take a holistic view of the case, the law and the Federal Constitution (see *Kyros International Sdn Bhd v Ketua Pengarah Hasil Dalam Negeri* [2013] 2 MLJ 650).

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[9] It is well established that fair and bona fide comments or criticism upon matter of public interest cannot be scandalous or libellous or even warranting criminal defamation, etc for democracy to survive. To put it mildly, punishing persons having some or all virtues of Socrates, Plato, etc to be punished by way
I of imprisonment or monetary sum, etc will not augur well for accountability, transparency and good governance in matters of public interest. Such persons are truly protected by not only under the law of defamation but also under art 10 of the Federal Constitution which relates to freedom of speech guaranteed by the Federal Constitution (see *Bonnard v Perryman* [1891] 2 Ch

269; *Cream Holdings Ltd and others v Banerjee and another* [2005] 1 AC 253). A

[10] The plaintiffs in this case who initiated an action for defamation without complying within the spirit and intent of s 10 of the Defamation Act on the facts of case had abused the judicial process and may also have committed other torts inclusive of malicious prosecution. B

[11] Fair comment is one of the pillar defence to an action in defamation and this pillar must not be read only with the common law cases but also art 10 of the Federal Constitution which is the supreme law of the land. Common law cases cannot limit the protection given under the constitution (see *Pegawai Pengurus Pilihanraya v Streram Sinnasamy & Ors* [2019] 1 LNS 589; *Macvilla Sdn Bhd v Mervyn Peter Guan Yin Hui & Anor* [2019] MLJU 693). Thus, the test in the Malaysian context must be related to malice and/or falsehood. Malice and/or falsehood does not relate to free speech guaranteed under the Federal Constitution. When malice and/or falsehood is established, defamation generally ought to succeed. The facts of this case is not one related to malice and/or falsehood. The learned judge's findings also reflects the same. C D

[12] What is important to note in this appeal is the statement made in respect of the purchase of eight units of offices was correct. However, the plaintiffs, during the cause of trial, gave evidence to say that the sale and purchase agreement of the units to establish the plaintiffs' statement were not true as the purchases were not proceeded with, through loans. This information which only the plaintiffs could have known was not even mentioned in the notice of demand dated 28 June 2012, which was sent by the plaintiffs to the appellant. This is supported by the evidence during the cross-examination of the first defendant as follows: E F

> MDM And by foundation I mean the purchase and the financing of these 8 properties. It did not exist at the time you made your statement. It had been withdrawn by the bank. G
>
> RR Well when I made the statement so basically I was not aware. So therefore the intention at the time and the main issue here is the leveraging of the fixed deposit to obtain the mortgages. So while the loans could have been finally cancelled but the issue at hand still exists and valid that there was mortgages that were approved given the loan were processed; were approved. H

[13] If that fact had been disclosed, the matter may have been settled by apology, etc (see *CS Wu v Wang Look Fung & Ors* [1981] 1 MLJ 178). The said letter of demand dated 28 June 2012 read as follows: I

> Date: 28th June, 2012
>
> Our Ref: WSH/4259/12/Lit-NLFC/WS
>
> MOHD RAFIZI BIN RAMLI

A Ibu Pejabat Parti Keadilan Rakyat

A-1-09 Merchant Square 1

Jalan Tropicana Selatan

474100 Petaling Jaya

B Selangor

BY AR REGISTERED POST/BY HAND

Mkini Dotcom Sdn Bhd

No 48 Jalan Kemuja

C Jalan Bangsar Utama

59000 Kuala Lumpur

BY REGISTERED POST

Dear Sirs,

D Re: PUBLICATION DEFAMATORY OF DATO SRI DR MOHAMAD SALLEH BIN ISMAIL, NATIONAL FEEDLOT CORPORATION SDN BHD, NATIONAL MEAT AND LIVESTOCK CORPORATION SDN BHD AND AGROSCIENCE NOTICE OF ACTION

E We represent Dato Sri Dr Mohamad Salleh Bin Ismail of No. 10, Jalan Setia Kasih 1, Bukit Damansara, 50490 Kuala Lumpur, National Feedlot Corporation Sdn Bhd (NFCorp), National Meat and Livestock Corporation Sdn Bhd (NMLC), Agroscience Industries Sdn Bhd (AISB) and Real Food Company Sdn Bhd (RFC) all of Tingkat 2, No. 2-4, Jalan Manau, 50744 Kuala Lumpur (herein after referred to as 'our said Clients').

F We are instructed to state as follows:-

1.that you, Mohd Rafizi Bin Ramli, the first named above (hereinafter referred to as 'Rafizi') are the Strategic Director of Parti Keadilan Rakyat, a political party incorporated in Malaysia and you, Mkini Dotcom Sdn Bhd the second named above (hereinafter referred to as 'Mkini') are a company incorporated in Malaysia G and the owner of an online television known as MalaysiaKini.TV;

2. that on 7.3.2012 you Rafizi at Ibu Pejabat Parti Keadilan Rakyat A-1-09, Merchant Square 1, Jalan Tropicana Selatan 1, 47410 Petaling Jaya, Selangor Darul Ehsan ('PKR office') caused to be printed, circulated and published an article entitled 'SKANDAL NFC: BUKTI BAGAIMANA DANA AWAM UNTUK H PROJEK FIDLOT DIGUNAKAN SEBAGAI 'JAMINAN' PINJAMAN PERIBADI UNTUK MEMBELI 8 UNIT HARTANAH MEWAH Dl KL ECO CITY, BANGSAR' (hereinafter referred to as 'the said Article'). The full contents of the said Article is set down hereunder:-

I *Seperti yang dijanjikan, Keadilan hari ini tampil dengan bukti kukuh bagaimana dana awam yang disalurkan kepada NFC untuk projek berimpak tinggi dan berkepentingan awam telah disalahgunakan bagi tujuan peribadi keluarga Dato' Seri Shahrizat yang memiliki NFC.*

Mondus operandi yang digunakan adalah mudah — sejumlah besar dana tersebut didepositkan ke dalam bank-bank tertentu. Keluarga Dato' Seri Shahrizat

kemudiannya membuat pinjaman pembiyaan untuk membeli pelbagai hartanah mewah di bawah nama mereka walaupun secara peribadinya, mereka tidak mempunyai simpanan yang kukuh di bank tersebut.

Semakan dengan bank tempatan mengesahkan fakta-fakta berikut setakat 16.2.2012 (yang disokong dengan dokumen carian kredit rasmi bank tersebut yang disertakan bersama):

1. *Lampiran A mengesahkan bahawa National Feedlot Corporation Sdn Bhd mempunyai simpanan deposit berjumlah RM71,395,617 dalam akaun 01181839801 dan RM90,972 dalam akaun 03984628723 di sebuah bank tempatan.*

2. *Lampiran B mengesahkan bahawa syarikat milik penuh keluarga Dato' Seri Shahrizat Jalil iaitu National Meat & Livestock Corporation Sdn Bhd mempunyai deposit berjumlah RM1,872,254 di akaun bernombor 03147802316 di bank tersebut.*

3. *Lampiran C mengesahkan bahawa syarikat milik penuh keluarga Dato Seri Shahrizat Jalil iaitu Agroscience Industries Sdn Bhd mendapat kemudahan pembiyaan berbaki RM197,338 melalui pinjaman bernombor 02050032605, walaupun syarikat itu hanya mempunyai simpanan berjumlah RM927 di bank tersebut.*

4. *Lampiran D mengesahkan bahawa Dato' Seri Salleh Ismail mendapat pinjaman peribadi berbaki RM4,391,240 untuk membiayai secara bersama pembelian hartanah melalui pinjaman bernombor 02062369427 dan menjadi penjamin kepada satu lagi pinjaman hartanah bernombor 02073919403 berbaki RM663,743, walaupun beliau secara peribadi hanya mempunyai simpanan RM421 di bank tersebut.*

Secara jelas, ini membuktikan bagaimana dana awam yang diberikan kepada NFC untuk mengusahakan projek fidlot telah diselewengkan untuk dijadikan jaminan untuk mendapatkan pinjaman peribadi dan dibelanjakan dengan membeli hartanah-hartanah di atas nama peribadi mereka.

Semakan KEADILAN menunjukkan bahawa pinjaman peribadi Dato' Seri Salleh Ismail dari bank tersebut telah digunakan untuk membeli 8 unit hartanah di KL Eco City Sdn Bhd seperti berikut (bukti pembelian dan rekod pinjaman dalam LAMPIRAN E):

UNIT	NILAI TEBUSAN PINJAMAN (FORCED SALE VALUE)
28-01	RM 1,479,628
28-02	RM1,105,380
28-03	RM1,105,380
28-3A	RM1,111,788
28-05	RM1,111,788
28-06	RM1,105,380
28-07	RM1,105,380

28-08	RM1,564,142
JUMLAH	RM9,688,866

Nilai tebusan pinjaman adalah anggaran harga hartanah yang dapat diperolehi semasa lelongan dan lebih rendah dari harga pasaran. Berdasarkan harga pasaran semasa unit komersil di KL Eco City iaitu RM1,000 hingga RM1,100 setiap kaki persegi, KEADILAN menganggarkan harga pasaran semasa unit-unit ini boleh mencecah RM12juta.

Kaedah menyalahgunakan dana awam untuk mendapatkan pinjaman peribadi seperti ini adalah menyalahi mandat yang diberikan kepada NFC untuk membangunkan projek berkepentingan nasional.

KEADILAN juga melahirkan rasa bimbang melihatkan rekod pembayaran pinjaman yang buruk; termasuklah tidak membayar bayaran pinjaman dalam bulan Julai dan Ogos 2011 selama dua bulan berturut-turut. Dalam bulan Disember 2011, perkara ini berulang kembali.

KEADILAN juga mendesak supaya Dato' Seri Najib Tun Razak menunaikan janji beliau untuk membekukan semua asset NFC, termasuklah simpanan tetap berjumlah RM71.4 juta ini.

MOHD RAFIZI RAMLI PENGARAH STRATEGI KEADILAN

3. that on 7.3.2012, you Rafizi caused to be published another article in your web known as *www.rafiziramli.com* on the internet which article is entitled 'Bukti Bagaimana Dana Awam Untuk Projek Fidlot Digunakan Sebagai 'Jaminan' Pinjaman Peribadi Untuk Membeli 8 Unit Hartanah Mewah Di KL Eco City, Bangsar' (hereinafter referred to as 'the said Second Article'). The full contents of the said Second Article is set down hereunder:-

Seperti yang dijanjikan, KEADILAN hari ini tampil dengan bukti kukuh bagaimana dana awam yang disalurkan kepada NFC untuk projek berimpak tinggi dan berkepentingan awam telah disalahgunakan bagi tujuan peribadi keluarga Dato Seri Shahrizat yang memiliki NFC.

Mondus operandi yang digunakan adalah mudah — sejumlah besar dana tersebut didepositkan ke dalam bank-bank tertentu. Keluarga Dato' Seri Shahrizat kemudiannya membuat pinjaman pembiayaan untuk membeli pelbagai hartanah mewah di bawah nama mereka walaupun secara peribadinya, mereka tidak mempunyai simpanan yang kukuh di bank tersebut.

Semakan dengan bank tempatan mengesahkan fakta-fakta berikut setakat 16.2.2012 (yang disokong dengan dokumen carian kredit rasmi bank tersebut yang disertakan bersama):

1. *Lampiran A mengesahkan bahawa National Feedlot Corporation Sdn Bhd mempunyai simpanan deposit berjumlah RM71,395,617 dalam akaun 01181839801 dan RM90.972 dalam akaun 03984628723 di sebuah bank tempatan.*

2. *Lampiran B mengesahkan bahawa syarikat milik penuh keluarga Dato' Seri Shahrizat Jalil iaitu National Meat & Livestock Corporation Sdn*

Bhd mempunyai deposit berjumlah RM1,872,254 di akaun bernombor 03147802316 di bank tersebut.

3. *Lampiran C mengesahkan bahawa syarikat milik penuh keluarga Dato' Seri Shahrizat Jalil iaitu Agroscience Industries Sdn Bhd mendapat kemudahan pembiayaan berbaki RM197.338 melalui pinjaman bernombor 02050032605, walaupun syarikat itu hanya mempunyai simpanan berjumlah RM927 di bank tersebut.*

4. *Lampiran D mengesahkan bahawa Dato: Seri Salleh Ismail mendapat pinjaman peribadi berbaki RM4,391,240 untuk membiayai secara bersama pembelian hartanah melalui pinjaman bernombor 02062369427 dan menjadi penjamin kepada satu lagi pinjaman hartanah bernombor 02073919403 berbaki RM663,743, walaupun beliau secara peribadi hanya mempunyai simpanan RM421 di bank tersebut.*

Secara jelas, ini membuktikan bagaiman dana awam yang diberikan kepada NFC untuk megusahakan projek fidlot telah diselewengkan untuk dijadikan jaminan untuk mendapatkan pinjaman peribadi dan dibelanjakan dengan membeli hartanah-hartanah di atas nama peribadi mereka.

Semakan KEADILAN menunjukkan bahawa pinjaman peribadi Dato' Seri Salleh Ismail dari bank tersebut telah digunakan untuk membeli 8 unit hartanah di KL Eco City Sdn Bhd seperti berikut (bukti pembelian dan rekod pinjaman dalam Lampiran E):

UNIT	NILAI TEBUSAN PINJAMAN (FORCED SALE VALUE)
28-01	RM1,479,628
28-02	RM1,105,380
28-03	RM1,105,380
28-3A	RM 1,111,788
28-05	RM1,111,788
28-06	RM1,105,380
28-07	RM1,105,380
28-08	RM1,564,142
JUMLAH	RM9,688,866

Nilai tebusan pinjaman adalah anggaran harga hartanah yang dapat diperolehi semasa lelongan dan lebih rendah dari harga pasaran. Berdasarkan harga pasaran semasa unit komersil di KL Eco City iaitu RM 1,000 hingga RM1,100 setiap kaki persegi, KEADILAN menganggarkan harga pasaran semasa unit-unit ini boieh mencecah RM12 juta.

Kaedah menyalahgunakan dana awam untuk mendapatkan pirijaman peribadi seperti ini adalah menyalahi mandate yang diberikan kepada NFC untuk membangunkan projek berkepentingan nasional.

KEADILAN juga melahirkan rasa bimbang melihatkan rekod pembayaran

pinjaman yang buruk; termasuklah tidak membayar bayaran pinjaman dalam bulan Julai dan Ogos 2011 selama dua bulan berturut-turut. Dalam bulan Disember 2011, perkara ini berulang kembali.

Memandangkan simpanan tetap NFC sebanyak RM71.4 juta berkait rapat dengan pembelian harta-harta peribadi ini, pengurusan NFC dan Dato' Shahrizat Jalil, sebagai wakil keluarganya, perlu memberi jaminan bahawa sebarang masalah pembayaran membabitkan pinjaman peribadi mereka tidak akan memberi apa-apa kesan kepada dana awam yang disimpan di bank yang sama.

Keadilan juga mendesak supaya Dato' Seri Najib Tun Razak menunaikan janji beliau untuk membekukan semua asset NFC, termasuklah simpanan tetap berjumlah RM71.4 juta ini.

MOHD RAFIZI RAMLI PENGARAH STRATEGI KEADILAN

4. that on 7.3.2012 at PKR office, you Rafizi caused to published a statement (hereinafter referred to as 'the news conference statement') and you, Mkini through your online television caused to be published, broadcast and disseminated the news conference statement which is reproduce in the following transcripts:-

Good afternoon today kita ada tiga press release berkaitan dengan NFC, (talking with Zuraidah while mic is shut) satu melibatkan pendedahan terbaru mengenai satu lagi siri pembelian hartanah-hartanah mewah, yang ada kaitan dengan wang NFC. Yang kedua ialah mengenai saman Dato' Seri Shahrizat Jalil terhadap YB Zuraida dan saya sendiri, dan yang ketiga adalah mengenai penglibatan pimpinan UMNO dalam pembangunan yang kita dedahkan hari ini, there are some elements, we feel that there are some elements of a conflict of interest.

Jadi saya mulakan dengan kenyataan saya, yang agak tebal, saudara-saudari sudah ada, dia agak numerical dan jugak di belakang itu juga ada there are lot of references you can, you have to make. Dan it can be quite confusing because that's a print out from the credit system.

Saya bacakan, kemudian kalau diakhir kalau ada soalan kita boleh ambil soalan. Seperti yang dijanjikan, Keadilan hari ini tampil dengan bukti, bagaimana dana awam yang disalurkan kepada NFC, untuk projek berimpak tinggi dan berkepentingan awam telah disalahgunakan bagi tujuan keluarga Dato' Seri Shahrizat Jalil yang menguasai NFC.

Sebelum ini kita telah sebut melalui pembelian kondominium-kondominium di Singapura, bagaimana mereka mendepositkan dan juga dana daripada NFC untuk mendapatkan pinjaman. Hari ini kita berikan bukti, we will show you how it is done. Modus operandi yang digunakan adalah mudah.

Sejumlah besar dana didepositkan ke dalam bank-bank tertentu. Keluarga Dato' Seri Shahrizat kemudiannya akan membuat pinjaman pembiayaan untuk membeli pelbagai hartanah mewah di bawah nama mereka walaupun secara peribadinya, mereka tidak mempunyai simpanan kukuh di bank-bank tersebut.

Semakan dengan sebuah bank tempatan, saya tak nak sebut bank sebab itu saya ada padamkan kod-kod bank, kalau saya tak padamkan nanti orang tau bank mana. Yang Hitam itu saudara-saudari cari selepas ini. Semakan kita dengan sebuah bank

tempatan, mengesahkan fakta-fakta berikut, dan data ini valid setakat 16 Februari 2012, its only about two weeks ago. Pertama kalau saudara-saudari tengok Lampiran A di muka surat 4. Lampiran A mengesahkan bahawa National Feedlot Corporation Sendirian Berhad mempunyai simpanan deposit berjumlah 71,395,617 ringgit dalam akaun number 011 saudara bacalah dan juga 90,972 dalam akaun 039 etc. di sebuah bank tempatan. That's the first one.

National Feedlot Corporation ada 72 million deposit at that particular bank which I will not name here.

If you go to the next page Lampiran B, serupa juga National Meat and Uvestock Corporation Sdn Bhd juga mempunyai deposit simpanan sebanyak 1.8 million. DP itu maksudnya deposit. 1.8 million. Yang ini [adalah syarikat yang dikawal sepenuhnya oleh keluarga Dato' Seri Shahrizat dan tak da kena mengena dengan NFC.

Ok let see, Lampiran C di muka surat 6 saudara-saudari juga akan tengok Agroscience Industries Sendirian Berhad. Ini syarikat induk yang menguasai NFC. This one a bit interesting if you see. Its at the same bank, bank yang sama tadi ada 72 juta simpanan tadi, tapi yang ini, walaupun sebenarnya mereka tidak ada simpanan pun yang ada hanya 927 ringgit, mereka diberikan kredit facility sebanyak 197,000. They have a loan akaun number 02050032605 yang berjumlah sebanyak 197,000.

Daripada sini saya rasa saudara-saudari as we go along can understand how it is done. You put a money into a bank and then all the other companies, walaupun not under that particular account, walaupun bukan under NFC then so long its related to you then you can have all sorts of credit facilities.

Dan yang inilah yang digunakan oleh Dato' Sri Salleh Ismail. Kalau saudara-saudari tengok Lampiran D di muka surat 7. Saudara-saudari boleh tengok. Saya mintak maaf kepada Dato' Salleh sebab kena tunjukkan loan profile dia. We can show the loan profile dia at this particular bank, simpanannya hanya 421 ringgit tetapi dia ada joint borrowing maksudnya pinjaman yang dibuat dengan seorang lagi, kita syaki kita rasa itu adalah anak beliau. Satu berjumlah 4,391,240 ringgit, sorry dan satu lagi adalah sebagai guarantor juga untuk beli hartanah sebanyak 663,743.

Ini yang kita persoalkan kerana kita tengok baki yang dia ada yang dia simpan dalam bank atas nama dia hanyalah 421 ringgit, tetapi oleh kerana, dia suadah ada kekuatan simpanan daripada NFC di bawah akaun membolehkan mereka untuk mendapat pembiayaan peribadi untuk membeli pelbagai hartanah mewah ya.

Sebab itu saya kata secara jelas, ini membuktikan bagaimana dana awam yang diberikan kepada NFC untuk mengusahakan projek feedlot telah diselewengkan, untuk dijadikan jaminan dan mendapatkan pinjaman peribadi dan dibelanjakan dengan membeli hartanah-hartanah diatas nama peribadi dan dibelanjakan dengan membeli hartanah-hartanah di atas nama mereka. Jadi, oleh kerana kita tahu dia sudah ada pinjaman, kita pun pergi semak lagi dan kita dapati bahawa pinjaman itu digunakan untuk membeli 8 unit hartanah di KL Eco City Sdn Bhd, satu pembangunan yang sedang berjalan di kawasan YB Nurul Izzah, that's why she is here and she will explain further the background.

Dan bukti pembelian dan rekod pinjaman, saudara-saudari boleh tengok dalam Lampiran E, dari muka surat 8 hingga ke muka. surat 15. Laporan E ini adalah maklumat collateral ataupun maklumat hartanah yang dibeli. Jadi tengok yang pertama, contohnya developer KL Eco City Sdn Bhd, unit numbernya unit 2801 dan juga forced sale value 1 perpuluhan 479 juta: Forced sale value adalah nilaian yang digunakan oleh bank untuk menilai pinjaman, credit worthiness, in case kalau mereka terpaksa lelong. Because dia tak pakai nilai pasaran dalam system credit. Jadi kalau saudar-saudari, semakan kita daripada semua daripada collateral system ini menunjukkan Dato' Sri Salleh di bank ini 8 unit yang dibeli daripada KL Eco City daripada unit 28-01 sehinggalah 28-08, harga nilaiannya adalah diantara 1 perpuluhan 56 juta yang tertinggi. Kemudian 1 perpuluhan 47 juta dan ada kebanyakannya 1 perpuluhan 1 juta. Kesemua 8 hartanah tadi nilaian forced sale valuenya adalah sebanyak 9 perpuluhan 7 juta. Forced sale value atau nilaian tebusan pinjaman yang saya sebut tadi, adalah anggaran harta hartanah, harga hartanah yang dapat diperolehi semasa lelongan. So the value is always lower than the market value. The current market value, kalau kita boleh tunjukkan sekarang.

These are, these are all jenis-jenis yang dibeli, yang 8 unit. Yang kita tunjukkan ada juga yang residential area, residential units tapi yang dibeli adalah retail units. The current market value is about 1,000 to 1,100 per square feet. And the unit yang dibeli is about 1,500 to 1,600 square feet per unit, 8 unit. So altogether sebab itu kita anggarkan bahawa market value of all the 8 units that they bought antara hingga boleh mencecah sehingga 12 juta value. 9.7 is only for the forced sale.

Ok, I'm done jadi property realty. Let's get back ok. Alright.

Jadi sebab itu kita bertegas bahawa, kaedah yang digunakan oleh keluarga Dato' Seri Shahrizat Jalil ini, iaitu dengan mendapatkan pinjaman peribadi, atas deposit NFC yang diletakkan di bank tertentu, menyalahi mandate yang diberikan kepada NFC.

Saya juga nak tarik perhatian saudara-saudari, saya tak sertakan rekod, sebab yang itu agak mengaibkan, jadi saya tidak meletakkan rekod pembayaran. Cuma saya boleh sebut bahawa, rekod pembayarannya adalah sangat buruk, bagi kelapan-lapan pinjaman ini. Most of the time, rekod yang bermula daripada bulan Mac 2011, pada masa mereka mula-mula beli sampai ke sekarang, hampir setiap bulan tertunggak. Samada satu bulan ataupun dua bulan. Ada bulan-bulan yang tertunggak sampai tiga bulan contohnya dalam bulan Disember 2011.

Jadi oleh kerana rekod pembayaran pinjaman yang sangat buruk ini, dan juga kita faham bahawa simpanan tetap NFC sebanyak 71.4 juta berkait rapat dengan pembelian harta-harta peribadi ini. They leverage on each other, the loans, the deposit are used to leverage on the loans, jadi pengurusan NFC dan juga Dato' Seri Shahrizat Jalil sebagai mewakili keluarga beliau, kita desak supaya beri jaminan bahawa sebarang masalah pembayaran yang membabitkan pinjaman peribadi mereka yang 8 unit ini tidak akan memberi apa-apa kesan ataupun recourse kepada bank yang boleh menyebabkan dana awam yang disimpan itu terjejas.

Sebab kita tidak tahu, apa arrangement di antara bank. This is money market arrangement. Kita tak tahu apa perjanjiannya. Kita khuatir oleh kerana rekod pembayaran, they bought under their name, they didn't pay. It's always late

instalments. We fear that this might have a corresponding repercussions on the 71.4 million fixed deposits that NFC has in this particular bank.

Dan I think what it shows, kalau saudara-saudari tengok pembelian in Mac 2011 dan sehinggalah bulan Februari 2012, Januari 2011, semuanya masih ada lagi transaksi yang melibatkan bank-bank dan juga akaun dan pinjaman di bank ini. Menunjukkan bahawa, arahan Dato' Seri Najib bahawa asset telah dibekukan itu tidak dilaksanakan atau dia tidak beri arahan yang jelas. Samada diberikan arahan sekali lagi, ataupun diambil tindakan kepada mana-mana pihak yang terus menerus menggunakan asset dan wang NFC walaupun arahan diberikan supaya asset dibekukan.

We are now instructed to say that the words complained in the said Article, in the said Second Article and in the news conference statement as a whole are false and defamatory of our said Clients. The said Article, in the said Second Article and in the news conference statement as a whole impute, inter alia that our said Clients are.-

(a)	That our	said Clients are dishonest;
(b)	Our said	Clients are criminal;
(c)	Our said	Clients are no worth any credit;
(d)	Our said	Clients cannot be relied upon; and
(e)	Our said	Clients cannot be trusted.

The words referred to in the said Article, in the said Second Article and in the news conference statement are injurious of our said Client's personal life, business, have subject to our said Clients to disrepute, public contempt and odium.

On behalf of our said Clients, we demand of you Rafizi in respect of the said Article, in the said Second Article and in the news conference statement within SEVEN (7) days from the date of receipt of this letter:-

A full and unequivocal apology and retraction on terms to be approved by us, to be published in two (2) national newspapers:

(a) A full and unequivocal apology and retraction on be published in two (2) national newspapers;

(b) Your written undertaking not to repeat the matters complained off; and

(c) Compensation for the sum of RM300,000,000.00 to be paid to our said Clients.

On behalf of our said Clients, we demand of you Mkini in respect of the said Article, in the said Second Article and in the news conference statement within SEVEN (7) days from the date of receipt of this letter:-

(d) A full and equivocal apology and retraction on terms to be approved by us, to be published in two (2) national newspapers;

(e) Your written undertaking not to repeat the matters; complained off; and

A (f) Compensation for the sum of RM200,000,000.00 to be paid to our said Clients.

TAKE NOTICE that in the event you fail and/or refuse and/or neglect to comply with the demand our said Clients shall have no alternative but to commence such legal proceeding against you as our said Clients deem fit including a prayer for
B injunction to restrain you, your servants and/or agents from repeating the aforesaid defamatory statement without further reference to you.

Meanwhile our said Clients reserves all its rights.

Yours faithfully,

C MESSRS WAN SHAHRIZAL, HARI & CO

[14] The law and/or practice on this area also requires to give such notice and seek apology. If the notice itself does not disclose the grounds for apology, it will follow that the first defendant has no obligation to tender an apology. The said
D relevant section under the Defamation Act 1957 is s 10 read as follows:

10 Apology in mitigation of damages

(1) In any action for defamation the defendant may (after notice in writing of his intention to do so duly given to the plaintiff at the time of filing his
E written statement of his case) give in evidence, in mitigation of damages, that he made or offered an apology to the plaintiff for such defamation before the commencement of such action or as soon afterwards as he had an opportunity of doing so in case the action shall have been commenced before there was an opportunity of making or offering such apology.

F

(2) In an action for libel contained in any newspaper any defendant who has paid money into court under the provisions of any written law relating to civil procedure may state in mitigation of damages, in his written statement of his case, that such libel was inserted in such newspaper without actual malice and without gross negligence and that, before the
G commencement of the action or at the earliest opportunity afterwards, he inserted or offered to insert in such newspaper a full apology for the said libel, or, if the newspaper in which the said libel appeared should be ordinarily published at intervals exceeding one week, had offered to publish the said apology in any newspaper to be selected by the plaintiff in
H such action.

[15] For reasons stated above, we allowed the appeal and set aside the orders against the appellant with costs of RM110,000 for here and below, subject to allocatur. As an ancillary order, after hearing the parties, we ordered all monies
I paid by the appellant to the respondent to be refunded with interests within 30 days of the order. The order for refund and terms was accepted by the respondent. As a consequential order, the cross-appeal was dismissed.

We hereby ordered so.

Appellant's appeal allowed; respondents' cross-appeal dismissed and orders against appellant set aside with costs of RM110,000 here and below.

Reported by Mohd Kamarul Anwar